



**OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN**

**GERALD C. MANN
ATTORNEY GENERAL**

Hon. George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. 0-1698
Re: Compensation of Actuary of Insurance
Department on out-of-State examination

By your letter of November 29, 1939, you request the opinion of this department upon the question whether you may issue a warrant in favor of George Van Fleet, Actuary in the Insurance Department, for the sum of \$43.77, under the fact situation reflected by the instruments enclosed in your letter, which facts are set out below:

It appears that Mr. George Van Fleet, Actuary in the Examining Division of the Board of Insurance Commissioners, was apparently commissioned by the Chairman of the Board to assist in the examination of an insurance company not organized under the laws of Texas, to-wit, the American Life Insurance Company, Detroit, Michigan. It appears that Mr. Van Fleet worked eight days during October on this out of State examination. It further appears that the rate of pay for this work is \$20.00 per day, the examiner's remuneration that would be paid by the home state of the company under examination to persons conducting the examination of a Texas company admitted to do business in that state.

It further appears that Mr. Van Fleet was inadvertently carried on the regular Examination Division payroll, position 0-38, Item 1, for the entire month of October, and paid the full amount of the salary affixed to such item, to-wit, \$450.00, for that month. It seems that the warrant for \$43.77 is sought to be issued in order to work an adjustment of the amount claimed to be due Mr. Van Fleet for the eight days he served as examiner, and the amount actually paid him for the month of October, including the eight days he served as examiner, under the item appropriated for the payment of the salary of the Actuary of the Examining Division.

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Senate Bill 397, passed by the 46th Legislature, Regular Session, 1939, provides the method of compensating examiners of this State who conduct examinations of insurance companies not organized under the laws of Texas. That Act provides in part as follows:

"Examiners' remuneration and expenses shall be the same as that which would be paid by the home State of a company under examination to persons conducting the examination of a Texas company admitted to do business in that State."

This provision has been fully discussed in our Conference Opinion No. 3075, dated August 3, 1939 with which you are familiar. The question was likewise incidentally involved in our Opinion No. 0-1471, addressed to the Honorable Walter C. Woodward, Chairman, Board of Insurance Commissioners, under date of October 14, 1939, with which you are likewise familiar.

Your question, however, does not involve the method of computing the compensation or the availability of an appropriation for the purpose of paying the compensation of examiners conducting examinations of insurance companies not organized under the laws of the State of Texas; but your inquiry seems to be concerned with the proposition whether the Actuary of the Examining Division assisting in the examination of an out-of-state insurance company may be compensated as an examiner, rather than as Actuary, for such period of time as he may actually engage in such out-of-state examination.

Your question, it seems, is explicitly answered by the below-quoted provisions appearing in Senate Bill 397:

"Where the Chairman of the Board shall deem it advisable, he may commission the Actuary of the Board, the Chief Examiner or any other examiner or employee of the department, or any other person, to conduct or assist in the examination of any company not organized under the laws of Texas and allow them compensation as herein provided, except that they may not be otherwise compensated during the time they are assigned to such foreign company examination."

It follows that during the time Mr. Van Fleet, the Actuary of the Examining Division, was by commission

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of the Chairman of the Board assisting in the examination of the out-of-state insurance company referred to, he was permitted to be compensated for such services in the manner provided in Senate Bill 397. Of course, for the eight days he served as, in effect, Examiner, he could not, under the provisions of Senate Bill 397, be compensated as "Actuary"; but we do not feel that the inadvertent payroll certification which reported him as serving as Actuary during the entire month of October will or should prevent the account of your Department from being corrected to show that for eight days of such month he actually served as "Examiner," under the provisions of Senate Bill 397, nor does it, in our opinion, prevent the adjustment of his compensation according to the actual fact situation.

Trusting that the foregoing adequately answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

R. W. Fairchild
Assistant

RWF:pbj

APPROVED DEC 7, 1939
/s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS